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*this \_\_\_\_\_ day of November, 1938.*

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*Attorney for Respondent,  
Industrial Accident Commission of the  
State of California.*

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*Attorneys for Respondent,  
Kenneth Tator.*

# FILE COPY

SUPREME COURT OF THE UNITED  
OCTOBER TERM, 1938.

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No. 158

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PACIFIC EMPLOYERS INSURANCE COMPANY,  
*Appellant,*  
*vs.*

INDUSTRIAL ACCIDENT COMMISSION OF THE  
STATE OF CALIFORNIA AND KENNETH TATOR.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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## STATEMENT OPPOSING JURISDICTION.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938.

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No. 158

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PACIFIC EMPLOYERS INSURANCE COMPANY,  
A CORPORATION,

*vs.*

*Appellant,*

INDUSTRIAL ACCIDENT COMMISSION OF THE  
STATE OF CALIFORNIA AND KENNETH TATOR,

*Appellees.*

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STATEMENT DISCLOSING MATTER AND GROUND  
MAKING AGAINST THE JURISDICTION OF THIS  
COURT.

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MAY IT PLEASE THE COURT:

The Industrial Accident Commission of the State of California and Kenneth Tator, appellees, in support of its objection to the jurisdiction of this Court to review the above entitled case on appeal, respectfully represents:

## A.

**There Is No Substantial Federal Question Presented upon this Appeal—the Highest Court of California Has Found that the Governmental Interest of California Is Greater than that of Massachusetts Under the Circumstances of the Case and that it Would Be Obnoxious to the Public Policy of California to Deny Relief Under the California Workmen's Compensation Act to the Injured Workman.**

On October 17, 1935, the appellee, Kenneth Tator, sustained an injury while working at Oakland, California. The injury was sustained while Tator was performing duties as a chemical engineer and research chemist in the Oakland plant or factory of his employer, the Dewey & Almy Chemical Company, a Massachusetts Corporation licensed to do business in the State of California. The Dewey & Almy Chemical Company maintained its principal offices in Cambridge, Massachusetts, and also maintained and operated a large plant or factory at Oakland, California.

Appellee Tator's permanent home is Portland, Oregon, where his parents reside. He left Portland to attend the Massachusetts Institute of Technology from which he graduated in 1930. Upon graduation he entered into a contract of employment with the Dewey & Almy Chemical Company at Cambridge, Massachusetts, and since that time he has continued in the employ of that company and has resided at Cambridge, Massachusetts.

Appellee Tator performed a large part of his work in the research laboratory of his employer at Cambridge, Massachusetts, but at various times was sent out of that State on company business. He had been sent to California on one prior occasion in the early part of 1934. This was in the nature of an inspection or educational trip and during such trip appellee Tator's salary and expenses were borne by

the main office of the employer at Cambridge, Massachusetts. In September, 1935, appellee Tator received an order from the employer's general manager to report to the company's factory at Oakland, California. The occasion for this order was the complaint of a customer of the company concerning an imperfection in a chemical compound which was manufactured at the Oakland, California, factory. Appellee Tator's stay in California was to be for an indefinite period. He arrived in Oakland and started work on September 17, 1935, and he was still working at the Oakland factory on November 27, 1935, at which time his case was heard by appellee Industrial Accident Commission. Appellee Tator's instructions on leaving Massachusetts were to assist in eradicating the complaint relative to the chemical compound and to wire to the Cambridge office of the company for directions as to where to go when he had completed his work in California. The reason for the defect in the manufacturing process which he was sent to California to assist in solving was discovered by him within fifteen hours after his arrival. Difficulties in another manufacturing process arose after the original problem had been solved and he continued working at the Oakland factory. On this occasion, unlike his prior educational trip, his travelling expense and salary while employed at Oakland were charged to the Oakland factory and borne by the California operations. While in California he was an employee of the Oakland factory, subject to the direction and control of its manager to the same extent as any other employee of the Oakland plant except that the Oakland manager's authority to discharge was limited in that he could discharge appellee Tator from his employment at the Oakland factory but not from the general employ of the company. The manager of the Oakland factory, together with appellee Tator and all employees at the Oakland factory, were all subject to the

direction and control of the executive officers of the company at Cambridge, Massachusetts.

Appellee Tator had been in California thirty days when he sustained an injury to his right hand, which occurred when his hand was caught in the gears of a machine on which he was working. This injury necessitated immediate medical and surgical treatment and eventually resulted in the amputation of the index, middle, ring and little fingers, including the palm of the hand and several metacarpel bones, leaving appellee Tator with the thumb and a small part of the palm of the right hand.

At the time of appellee Tator's injury, the Dewey & Almy Chemical Company carried workmen's compensation insurance covering its operations in California and in Massachusetts. The Hartford Accident & Indemnity Company insured it by a policy under which the obligation of the insurer included the workmen's compensation law of Massachusetts "and no other". This policy named Cambridge and Walpole, Massachusetts, as the location of work places of the employer. The appellee, Pacific Employers' Insurance Company, a California corporation, had issued a policy of workmen's compensation insurance insuring said company against the obligations imposed by the California Workmen's Compensation Act, and named the work places of the employer as the factory in Oakland and elsewhere in the State of California. The only limitation or exclusion in this policy was that it did not cover the operations of the Chemical Company outside the State of California. This policy by its provisions clearly covers appellee Tator's injury unless there is no liability under the California law as claimed by appellant.

After being injured, appellee Tator made application to the Industrial Accident Commission of California for compensation, naming Dewey & Almy Chemical Company as his employer and appellant Pacific Employers' Insur-

ance Company as the insurance carrier. During the proceedings before the California Industrial Accident Commission, the Hartford Accident & Indemnity Company was joined as a defendant. During said proceedings, lien claims on behalf of the physicians and surgeons, nurses and hospital who had rendered services to appellee Tator following his injury were made. The Industrial Accident Commission of California assumed jurisdiction over the claim of appellee Tator and awarded compensation to him and awarded payment of bills for nursing services and awarded payment of medical and hospital bills directly to Drs. N. Austin Cary, J. Scott Quigley and Ergo A. Majors of Oakland, California, and to the Peralta Hospital of Oakland, California. It held appellant, Pacific Employers' Insurance Company, liable for the payment of compensation and dismissed the Hartford Accident & Indemnity Company. It held appellant liable for the medical, hospital and nursing services rendered to appellee Tator and directed appellant to pay medical expenses in the sum of \$495.04. It also ordered that appellant furnish the further necessary medical attention, the attending physician having reported that a plastic operation would be necessary to improve the condition of appellee Tator's hand. Tator was still under the care of Dr. Ergo Majors at the time of the hearing before the Industrial Accident Commission on November 27, 1935.

Before the Industrial Accident Commission of California and in the Appellate Courts of the State of California, the appellant, which is a California corporation domiciled and doing business only in California, sought to avoid liability by contending that by virtue of the full faith and credit clause California was without power to assume jurisdiction over the claim of appellee Tator; that the full faith and credit clause compelled the recognition by the State of California of the workmen's compensation statute of the State of Massachusetts and the denial by the State of Cali-

fornia of the right to enforce its own workmen's compensation statute in its own courts. This issue was determined adversely to the contention of the appellant by the Industrial Accident Commission, the District Court of Appeal, First Appellate District, Division Two (denial of petition for writ of review without opinion), and by the Supreme Court of the State of California.

The California Supreme Court held that under the circumstances of the case the governmental interest of California outweighs the governmental interest of Massachusetts and that it would be obnoxious to the public policy of California to deny to the injured workman in this case the right to apply for compensation in California, particularly when to do so would interfere with the prompt and certain rendition of surgical and hospital treatment by causing doctors, nurses and hospitals to go to another State to collect the charges for their services. In so holding, the California Supreme Court was clearly correct, for there is no compulsion by virtue of the full faith and credit clause or any other provision of the Federal Constitution forcing one State in all cases to subordinate its domestic policy to the statutes of a foreign State. The full faith and credit clause is not to be automatically applied whenever the statutes of two States come into conflict, for the result of such application would be that the statute of each State must be enforced in the courts of the other but cannot be enforced in its own courts. The result of such a rule or doctrine in this case would be the enforced application of the Massachusetts statute without regard to the possible interest of the State of California. In this case California was applying a lawfully enacted statute of its own and one who challenges the right of a State to enforce such a statute in its own courts because of the force given to the conflicting statute of another State by the full faith and credit clause assumes the burden of showing that of the conflicting interests involved those of the

foreign State are superior to those of the forum. It was not shown by appellant that, upon an appraisal of the governmental interests of the two States involved, those of Massachusetts so far outweigh the interests of California that the full faith and credit clause compels California to subordinate its statute to that of Massachusetts. The scale of decision, on the contrary, must incline in the opposite direction for the interest of California under the circumstances of this case far outweighs that of Massachusetts and to fail to apply the California law would be repugnant to the public policy of California.

It is, therefore, urged that the matter sought to be reviewed herein by this Court presents no substantial Federal question upon this appeal.

### B.

**The Validity of the State Statute as Applied in this Case Is Established by Principles Expressed by this Honorable Court in Cases Hereinbefore Decided.**

*Alaska Packers Assn. v. Ind. Acc. Com. of the State of California*, 294 U. S. 532;  
*State of Ohio v. Chattanooga Boiler and Tank Co.*, 289 U. S. 439;  
*Bradford Electric Light and Power Co. v. Clapper*, 286 U. S. 145.

### C.

**Where the State of the Forum Has Expressly Declared Its Public Policy in a Provision of Its Constitution and by Interpretation of Its Highest Court, the Full Faith and Credit Clause Does Not Compel the Application of a Conflicting Statute of a Sister State Where to Do So Would Be Obnoxious to the Public Policy of the Forum.**

California Constitution, Art. XX, Sec. 21 (adopted November 5, 1918);

*Pacific Employers' Ins. Co. v. Industrial Accident Commission and Kenneth Tator*, 95 Cal. Dec. 107; 75 Pac. (2d) 1058;  
*Alaska Packers Association v. Industrial Accident Commission*, 294 U. S. 532.

Respectfully submitted,

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Dated May 18, 1938.

(6431)

